

WETLANDS COUNCIL

MINUTES

April 10, 2018

The Wetlands Council met on Tuesday, April 10, 2018 in Rooms 112, 113, 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Lee Carbonneau, Jim Gove, Carol Henderson, Michael Klass, Deborah Lievens, Richard Mellor, Russ St. Pierre, Seth Prescott, Bob Wolff, Wendy Weisiger and Gretchen Young

Absentees: None

Also present were: Carolyn Guerdet, Council Clerk and Paula Scott, Appeals Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 9:00 a.m. with introductions and a quorum present.

1. **Introduction**

2. **Approval of Minutes**

- ***Councilor Gove made a motion to approve the March 27, 2018 meeting minutes, second by Councilor St. Pierre. Motion passed unanimously with Councilors Henderson, Mellor and Weisiger abstaining.***

3. **Public Input:** None

4. **Status of Appeals**
Paula Scott, Appeals Clerk

I. New Appeals

II. Decisions that need to be written/finalized and issued.

Docket No. 17-08 WtC – Robert C. Puff, Jr., et al. Appeal

Subject: 5/8/17 Approval of Wetlands Permit #2017-00756 issued to Joseph Bussichella
Hearing Officer: September 20, 2017 David Conley was appointed by AG
Status: June 6, 2017 received Petition for Appeal. 6/9/17 issued Insufficient Appeal letter. 6/12/17 received Certification of Susan A. Maus joining Appeal as Appellant. 6/13/17 received Amended Petition for Appeal. 6/14/17 issued Receipt of Amended Appeal letter. Council accepted Appeal at the September 12, 2017 meeting and issued Appeal Accepted letter. September 12, 2017 received Susan A. Maus' Withdrawal as an appellant. 9/22/17 issued Notice of Pre-hearing Conference scheduled for October 30, 2017 at 1 p.m. 10/30/17 due to power outage, PHC was cancelled. 10/31/17 received PHC submission from Attorney Puff. 11/2/17 issued rescheduled PHC notice, new date and time is 11/13/17 at 10 a.m. 11/8/17 received Appearance from Joseph Bussichella. 11/13/17 issued Pre-hearing Order scheduling hearing for February 13, 2018 at 9 a.m. January 9, 2018 received Permittee's Witness and Exhibit List. 1/22/18 received Appellant's Exhibit List. February 12, 2018 received Appearance of Collis Adams. Hearing was held February 13th, 2018. Council voted to deny the Appellants' Appeal. March 27, 2018 issued Decision and Order on Petition for Appeal.

III. Hearings or PHCs Pending

Docket No. 17-12 WtC (PNA) – Sullivan County Sportsmen, et al. Appeal

Subject: Denial of Application for Extension of Permit #2008-02781 issued to Dept. of Fish and Game

Hearing Officer: January 18, 2018 David Conley was appointed by AG
Recused Councilors: Carboneau, Gove, and Henderson
Status: September 20, 2017 received Preliminary Notice of Appeal and Offer to Enter into Settlement Discussions. November 3, 2017 received Notice of Appeal. 11/6/17 issued receipt of Appeal letter. 11/22/17 received Appearance of Allen Brooks and Motion to Dismiss for Lack of Standing. 11/29/17 received Assented to Motion to Extend Deadline. 11/29/17 issued Ruling Granting motion to Extend Deadline. December 7, 2017 received Appellants' Objection to Motion to Dismiss for Lack of Standing. 12/12/17 received Appellants' Motion to Strike. 12/14/17 received State's Objection to Appellants' Motion to Strike. 12/18/17 issued Ruling denying Motion to Strike. Council to accept or dismiss appeal. Discussion was held by Council. January 9, 2018 Council accepted the Appeal. 1/11/18 issued Ruling on Acceptance and Motion For Summary Dismissal. 1/16/18 received Motion for Reconsideration. 1/26/18 received Objection to Motion for Reconsideration. 1/29/18 received Reply to Appellants' Objection to Motion for Reconsideration. February 1, 2018 received Appellants' Response to Appellee's Reply to Appellants' Objection to Motion for Reconsideration. Hearing Officer to issue ruling on Motion for Reconsideration.

Docket No. 17-13 WtC – Kelly Connolly, et al Appeal

Subject: 08/28/17 approval of permit #2017-01434 issued to Mark and Teresa Richey
Hearing Officer: February 26, 2018 David Conley was appointed by AG
Status: September 28, 2017 received Notice of Appeal. 9/29/17 issued receipt of Appeal letter. October 5, 2017 received Appearance of Russell Hilliard for the permittees. 10/17/17 received Motion for summary Dismissal. 10.27.17 received Reply and Objection to Motion for Summary Dismissal and Provisional Motion to Extend Time for Appeal. 10/31/17 Reply to Objection for Summary Dismissal and Objection to Provisional Motion to Extend Time for Appeal.. November 6, 2017 received Replication regarding Motion for Summary Dismissal and Provisional Motion to Extend Time for Appeal. 11/15/17 received Further Response to Appellants' Replication. Please note the Appeal appears to be untimely and in correctly addressed therefore, the Council may have to determine whether the Appeal was or was not timely filed. Discussion was January 9, 2018 Council declined to accept Appeal as untimely. 1/12/18 issued Ruling on Acceptance of Appeal and Motion to Summarily Dismiss. 1/18/18 received Appellants' Motion for Rehearing and reconsideration. 1/22/18 received Objection to Appellants' Motion for Rehearing and Reconsideration. February 13, 2018 Council granted Motion for Rehearing and Reconsideration. 2/16/18 issued Ruling on Motion for Rehearing and Reconsideration. March 7, 2018 issued Notice of Pre-hearing Conference scheduled for April 2, 2018 at 9 a.m. 3/13/18 received Permittees Motion for Rehearing and Reconsideration. 3/20/18 received Appellants' Objection to Motion for Rehearing and Reconsideration. 3/26/18 received Appellants' Witness and Exhibit Lists. 3/30/18 issued Ruling Denying Permittees' Motion for Rehearing and Reconsideration. April 2, 2018 issued Pre-hearing Order scheduling hearing for August 14, 2018 at 9 a.m. 4/6/18 received Permittees' Witness and Exhibit Lists.

Docket No. 17-16 WtC – Bryan and Linda Corr Appeal

Subject: 11/03/17 Administrative Order No. 17-028 WD
Hearing Officer: January 18, 2018 David Conley was appointed by AG
Status: November 30, 2017 received Petition for Appeal and Appearance of John Cronin. December 4, 2017 issued receipt of Appeal letter. 12/29/17 received the Appearance of Joshua Harrison for the Department. Council to accept or deny Appeal at their January 9th meeting. January 10, 2018 issued Appeal accepted letter. 1/25/18 issued Notice of Pre-hearing Conference scheduled for February 14, 2018 at 11 a.m. 2/14/18 issued Pre-hearing Order scheduling hearing for April 10, 2018 at 9 a.m. 2/22/18 received State's Motion to Dismiss. March 14, 2018 received Petitioner's Objection to Motion to Dismiss. 3/22/18 issued Notice of Rescheduled Hearing moving hearing to May 8th at 9 a.m. 3/28/18 received Assented-To Motion to Continue Deadlines. April 2, 2018 issued letter granting Assented-To Motion to Continue Deadlines.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Docket No. 17-10 WtC – Patricia A. Rose Appeal

Subject: 06/15/17 approval of Wetlands Permit #2015-03134 issued to Frank and Laurie Leichthammer
Hearing Officer: Not Assigned
Status: July 14, 2017 received Petition for Appeal. 7/17/17 sent Insufficient Appeal letter. August 16, 2017 received Revised Petition for Appeal. 8/17/17 issued Receipt of revised Appeal letter. 8/30/17 received Appearance of Abigail Karoutas and Christopher Wyskiel for permittee and Motion for Summary Dismissal. October 6, 2017 received Response to Motion for Summary Dismissal. Council to accept or deny Appeal at their

October 10, 2017 meeting. 10/10/17 Appeal accepted and denied the Motion for Summary Dismissal. 10/11/17 issue ruling accepting Appeal and Denying Motion for Summary Dismissal. 10/25/17 issued Notice of Pre-Hearing Conference scheduled for November 13, 2017 at 9 a.m. 11/7/17 received withdrawal of Abigail Karoutas and Christopher Wyskiel. 1/13/17 issued Pre-hearing Order scheduling Hearing for January 9, 2018 at 9 a.m. 11/20/17 issued Order on permittees' Motion for Summary Dismissal. December 1, 2017 received permittees' response on the Permittees' Response on the Permittee's Motion for Summary Dismissal and Request for Summary Judgment. 12/11/17 issued Order on Permittees' Response on Permittee's Motion for Summary Dismissal and Request for Summary Judgment. 12/13/17 received Permittee's Witness and Exhibit List. 12/18/17 received Appellant's Witness and Exhibit List. January 9, 2018 received Appearance from Mary Ann Tilton for the Department. Hearing was held on January 9, 2018 and continued until March 13, 2018 at 9 a.m. January 18, 2018 received Appellant's Witness and Exhibit List. Motion to Remand received on 1/23/18. 1/30/18 issued Ruling on Motion to Remand, which was granted. Appeal is stayed and continued hearing scheduled for March 13, 2018 is cancelled. February 8, 2018 received Motion for Reconsideration. February 20, 2018 received Response to Motion for Reconsideration. 2/21/18 issued letter denying Motion for Reconsideration. Appeal is stayed.

V. Misc.

5. New Business

- a. HB1104 legislation reviewed by Chairman Kimball, who did share Wetlands Council concerns at the recent hearing. It is still with the committee.
- b. Discussion of draft Wetlands Rules

Mary Ann Tilton, Land Resources Management Bureau Assistant Administrator, was present to answer questions and listen to comments. Also present and contributing to the discussion was Barbara Richter, Executive Director of the NH Association of Conservation Commissions. A lengthy discussion was held and comments made regarding the new draft Wetlands Rules. Comments are still being received from many stakeholders and will be posted on the website. Council members were reminded to hold comments on 'need' until Supreme Court rules on Cook Appeal. Any additional comments can still be sent to the Wetlands Bureau. Mary Ann does appreciate the request for more time review when the new draft comes out.

Chairman Kimball will send a summary letter to the Commissioner.

6. Old Business

7. Next Meeting –

May 8, 2018 at 8 a.m. with the Bryan and Linda Corr Appeal at 9 a.m.

8. Adjournment

- ***Councilor Klass made a motion to adjourn, second by Councilor Carbonneau. Motion passed unanimously.***

Meeting adjourned at 10:52 a.m.